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MISSOURI BOARD
OF PHARMACY

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

MISSOURI BOARD OF PHARMACY,)	
)	
Petitioner,)	
)	
v.)	No. 06-1421 PH
)	
OZARK APOTHECARY, L.L.C.)	
d/b/a OZARK COMPOUNDING PHARMACY,)	
)	
Respondent.)	

SETTLEMENT AGREEMENT

Come now Ozark Apothecary, L.L.C. d/b/a Ozark Compounding Pharmacy ("Ozark Compounding Pharmacy" or "Respondent" or "Permit Holder") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Agreement for the purpose of resolving the question of whether Respondent's permit to operate a pharmacy will be subject to discipline. Respondent and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to Section 621.045, RSMo.

1. Respondent acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proved upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it; and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of

discipline. Having been advised of these rights provided Respondent, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document, as they pertain to Respondent.

2. Respondent acknowledges that it has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause for discipline, along with citations to laws and/or regulations the Board believes were violated. For the purpose of settling this dispute, Respondent stipulates that the factual allegations contained in this settlement are true and stipulates with the Board that Respondent's permit to operate a pharmacy, Permit Number 2002023724, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo.

3. Respondent acknowledges that it may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitutes grounds for discipline of Respondent's permit. If Respondent requests review, this Settlement agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Respondent's license. If Respondent does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 (fifteen) days after the document is signed by the Executive Director for the Board.

4. Respondent acknowledges that it has been informed of its right to consult legal counsel in this matter.

5. The parties stipulate and agree that the disciplinary order agreed to by the Board and Respondent in Part II herein is based on the First Amended Complaint filed herein by the Board.

Respondent and the Board understand that the Board may not take further disciplinary action against Respondent based on facts or conduct set out in Part I or facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

6. Respondent understands and agrees that the Missouri State Board of Pharmacy will maintain this Agreement as an open record of the Board as required by Chapters 338, 610, 620 and 621, RSMo, as amended.

PART I

Based upon the foregoing, the Board and Respondent herein jointly stipulate to the following:

JOINT PROPOSED FINDINGS OF FACT

1. The Board is an agency of the State of Missouri created and established pursuant to Section 338.110, RSMo, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Respondent, Ozark Apothecary, L.L.C. d/b/a Ozark Compounding Pharmacy ("Respondent" or "Ozark Compounding Pharmacy"), located at 2902 A McClelland Blvd., Suite #1, Joplin, Missouri is permitted by the Board as a pharmacy, Permit No. 2002023724. Respondent's permit is, and was at all times relevant herein, current and active.

3. S.C. is currently the pharmacist-in-charge of Ozark Compounding Pharmacy and has been since June 14, 2004.

4. On or about January 20, 2005, inspector Van Fleet completed an inspection at Ozark Compounding Pharmacy.

5. Many compounding ingredient (chemical) outdates were found.

6. Respondent's failure to remove outdated drugs from the active inventory is in violation of 20 CSR 2220-2.010(6) which states:

(6) Drugs and devices that are maintained as part of the pharmacy inventory or are being processed for dispensing or other distribution purposes must be physically separated at all times from articles, supplies or other drugs that are for employee personal use or that are outdated, distressed, misbranded or adulterated. An area separate from drug storage must be used to store quarantined, nonusable substances. Areas used for this type of drug storage must be clearly identified. Any prescription drugs that are present in a licensed pharmacy but are for the personal use of pharmacy personnel must be labeled in accordance with section 338.059, RSMo.

JOINT PROPOSED CONCLUSIONS OF LAW

1. Based on the foregoing, Respondent's permit is subject to disciplinary action pursuant to Section 338.055, RSMo, which states in pertinent parts:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter.

* * *

2. Based on the foregoing, Respondent's permit is subject to disciplinary action pursuant

to Section 338.285, RSMo, which states:

The board is hereby authorized and empowered, when examination or inspection of a pharmacy shall disclose to the board that the pharmacy is not being operated or conducted according to such legal rules and regulations and the laws of Missouri with respect thereto, to cause a complaint to be filed before the administrative hearing commission pursuant to chapter 621, RSMo, charging the holder of a permit to operate a pharmacy with conduct constituting grounds for discipline in accordance with section 338.055.

PART II

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.110, RSMo:

1. Respondent's permit to operate a pharmacy, Permit No. 2002023724 is hereby PUBLICLY CENSURED.

2. The terms of this Settlement Agreement are contractual, legally enforceable, binding, and not merely recitals. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

3. Respondent, together with its heirs and assigns, and its attorneys, does hereby waive and release the Board, its members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions,

causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

RESPONDENT

OZARK APOTHECARY, L.L.C. d/b/a
OZARK COMPOUNDING PHARMACY

By:



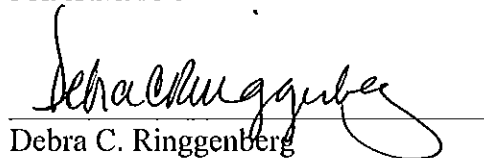
Steven Charles
Member

Date:

PETITIONER

MISSOURI BOARD OF
PHARMACY

By:



Debra C. Ringgenberg
Executive Director

Date:

6-25-08

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